



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case reference : **LON/00AE/LDC/2024/0034**

Property : **Guinevere Court, King George Crescent, Wembley HA0 2FH**

Applicant : **Wallace Estates Limited**

Representative : **Ms Danielle Panju of Premier Block Management Limited**

Respondents : **The leaseholders named on the application**

Representative :

Type of application : **For the dispensation of some of the consultation requirements under s.20 Landlord and Tenant Act 1985**

Tribunal member : **Judge Simon Brilliant**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **02 July 2024**

DECISION

Decision of the Tribunal

The Tribunal determines that those parts of the consultation requirements provided for by s.20 of the Landlord and Tenant Act 1985 ("the Act") which have not been complied with are to be dispensed with.

The application

1. The Applicant seek a determination pursuant to s.20ZA of the Act for the dispensation of all or any of the consultation requirements provided for by s.20 of the Act. The application was dated 02 February 2024.
2. Directions of the Tribunal were issued on 23 April 2024.
3. The case was listed for a paper determination. No request had been made by any of the parties for an oral hearing.

The hearing

4. The matter was determined by way of a paper hearing which took place on 02 July 2024.

The background

5. The premises consist of a purpose-built 17 unit residential block of flats which is three-storeys high.

Particulars of the application

6. The Applicant has applied for dispensation from the statutory consultation requirements in respect of repairs to a balcony which is causing ongoing water leaks into flats 7 and 13. The plasterboard in 13 has already started to collapse, and mould is growing in both of the affected flats.
7. The works which have been carried out consist of waterproofing the balcony, including the erection of scaffolding on two sides. The expected cost is £8,412.00 including VAT. The works have been commenced prior to a consultation because there is a significant hole in the ceiling of flat 13 and ongoing water ingress. There is said to be a risk to structural damage.
8. A fuller description of the works is found in is to be found on page 7 of the application notice.
9. The only issue for the Tribunal is whether it is reasonable to dispense with the statutory consultation requirements. **This application did not concern the issue of whether any service charge costs will be reasonable or payable.**
10. No notice was received from any of the Respondents opposing the application. There is no suggestion of any prejudice arising from the failure to carry out the statutory consultation process.

The law

11. s.20 of the Act provides for the limitation of service charges in the event that the statutory consultation requirements are not met. The consultation

requirements apply where the works are qualifying works (as in this case) and only £250 can be recovered from a tenant in respect of such works unless the consultation requirements have either been complied with or dispensed with.

12. Dispensation is dealt with by s.20ZA of the Act which provides:-

"Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements"

13. The following paragraphs are found on page 7 is to be found mainly adapted from the decision of Martyn Rodger KC in Marshall v Northumberland & Durham Property Trust Ltd [2022] UKUT 92 (LC).

14. ss.18 to 23A of the Act comprise provisions intended to protect residential tenants from having to pay excessive, unreasonable, unexplained, or unexpected service charges. ss.20 and 20ZA provide protection by requiring landlords (and others entitled to levy service charges) to consult with tenants before they enter into an agreement for which a service charge will be payable.

15. A failure to consult on such an agreement will limit each qualifying tenant's contribution to costs payable in respect of the agreement to £250 per service charge year.

16. In Daejan Investments Ltd v Benson [2013] UKSC 14, the Supreme Court considered the proper approach to an application for dispensation under s.20ZA. By a majority the Court concluded that securing compliance with the statutory consultation requirements was not an end in itself. ss.20 and 20ZA were intended to reinforce, and to give practical effect to the twin purposes of s.19 which were to ensure that tenants are not required (i) to pay for unnecessary services or services which are provided to a defective standard, and (ii) to pay more than they should for services which are necessary and are provided to an acceptable standard.

17. Lord Neuberger gave the only speech in support of the majority view, with which Lord Clarke and Lord Sumption JJSC agreed. He pointed out, at [40], that s.20ZA provides little guidance on how the dispensing jurisdiction is to be exercised, other than that the tribunal must be "satisfied that it is reasonable to do so".

18. He continued, at [41]:

"However, the very fact that s.20ZA(1) is expressed as it is means that it would be inappropriate to interpret it as imposing any fetter on the LVT's exercise of the

jurisdiction beyond what can be gathered from the 1985 Act itself, and any other relevant admissible material. Further, the circumstances in which a s.20ZA(1) application is made could be almost infinitely various, so any principles that can be derived should not be regarded as representing rigid rules.”

19. Having identified the purpose of the consultation provisions as being the protection of tenants from (i) paying for inappropriate works or (ii) paying more than would be appropriate, Lord Neuberger explained, at [44]-[45], that the issue on which tribunals should focus when determining an application under s.20ZA(1) was “the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the requirements”. If “the extent, quality and cost of the works were in no way affected by the landlord’s failure to comply with the requirements” dispensation should normally be granted, because, “in such a case the tenants would be in precisely the position that the legislation intended them to be – ie as if the requirements had been complied with”.
20. Lord Neuberger considered, at [46]-[47], that it would not be right to focus on the seriousness of the breach of the consultation requirements; the only relevance of the extent of the landlord’s oversight was “in relation to the prejudice it causes”. The overarching question was not whether the landlord had acted reasonably but was whether the tribunal was satisfied that it was reasonable to dispense with compliance.
21. In assessing the prejudice to the tenants if dispensation was granted Lord Neuberger explained, at [65], that it was necessary to take account only of the sort of prejudice which s.20 was intended to protect against: “... the only disadvantage of which they could legitimately complain is one which they would not have suffered if the requirements had been fully complied with, but which they will suffer if an unconditional dispensation were granted.”
22. Lord Neuberger concluded that dispensation could be granted on conditions. One such condition of dispensation could be to require that the landlord compensate the tenants for any costs they may have incurred in connection with the application under s.20ZA. At [64], Lord Neuberger considered that a landlord seeking dispensation was in a similar position to a party seeking relief from forfeiture, in that they were “claiming what can be characterised as an indulgence from a tribunal at the expense of another party”.
23. Summarising his conclusions, at [71], Lord Neuberger said that: “Insofar as the tenants will suffer relevant prejudice as a result of the landlord’s failure, the LVT should, at least in the absence of some good reason to the contrary, effectively require the landlord to reduce the amount claimed as service charges to compensate the tenants fully for that prejudice. That outcome seems fair on

the face of it, as the tenants will be in the same position as if the requirements have been satisfied, and they will not be getting something of a windfall.”

The objections

24. As I said, there have been no objections and there are no suggestions of prejudice.

Decision

25. The Tribunal is satisfied that, in the particular circumstances of this case, it is reasonable to dispense with the consultation requirements in respect of the balcony repairs.

26. The Tribunal's determination is limited to this application for dispensation of consultation requirements under section 20ZA of the Act.

Name: Simon Brilliant

Date: 02 July 2024